

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

CITYVIEW AT RIVERWALK, LLC and)
FOCUS DEVELOPMENT, INC.)
)
Plaintiffs,)
)
v.) No. 3:11-CV-050
)
KNOXVILLE COMMUNITY)
DEVELOPMENT CORPORATION and)
THE CITY OF KNOXVILLE, TENNESSEE,)
)
Defendants.)

MEMORANDUM AND ORDER

This case is set for trial on April 8, 2013. Three motions are currently pending.

1. Defendants have moved for a continuance of trial [doc. 44], arguing that necessary removal and remediation of contaminated soil has not yet been completed. Plaintiffs oppose the motion [doc. 46], essentially accusing the defense of dragging its feet. The defendants have filed a reply [doc. 47].
2. Plaintiffs have filed a “Motion for Mediation” [doc. 49], contending that mediation could be completed in January 2013 and that trial could still take place in April 2013 if necessary. In response [doc. 51], defendants do not dispute that mediation is appropriate but they argue that the work on the contaminated soil must be completed first in order for mediation to be effective.
3. Plaintiffs move to strike [doc. 50] an affidavit filed in support of the continuance motion. A response [doc. 52] and a reply [doc. 53] have been filed.

Each of these motions will be denied as moot. This case is appropriate for mediation, and the court will now so order on its own terms. “With or without the agreement

of the parties in any civil action [with exceptions not applicable herein], the Court may refer all or part of the underlying dispute to Mediation.” E.D. TN. LR. 16.4(a).

The parties’ positions notwithstanding, two facts are apparent. First, the contaminated soil issue is a central component of defendants’ counterclaim, and that work must be completed prior to trial or mediation. Second, plaintiffs’ representation that mediation of this complex construction litigation could be completed within two months is unrealistic.

It is therefore **ORDERED** that:

1. The defendants shall have all soil remediation work and associated expert analysis completed by May 31, 2013.
2. The parties shall mediate this case no later than August 30, 2013.
3. Trial is reset to February 18, 2014.
4. The scheduling order [doc. 43] remains in effect, and all unexpired pretrial deadlines are continued to conform with the new trial date.
5. The parties shall, jointly or separately, file a status report no later than May 31, 2013.
6. The pending motions [docs. 44, 49, 50] are **DENIED AS MOOT**.

IT IS SO ORDERED:

ENTER:

s/ Leon Jordan
United States District Judge